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HOUSE BILL 35

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Patricia A. Lundstrom

FOR THE ECONOMIC AND RURAL DEVELOPMENT AND  
TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO ASSET BUILDING; ESTABLISHING A PROGRAM THAT  
ADMINISTERS INDIVIDUAL DEVELOPMENT ACCOUNTS; ENACTING THE  
INDIVIDUAL DEVELOPMENT ACCOUNT ACT; AMENDING AND ENACTING  
SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 12 of this act may be cited as the "Individual  
Development Account Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
Individual Development Account Act:

A. "account owner" means the person in whose name  
an individual development account is originally established;

B. "allowable use" means a use that complies with  
the provisions of the Individual Development Account Act, or

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1 rules adopted pursuant to that act;

2 C. "authorized financial institution" means a  
3 financial institution authorized by the division to hold and  
4 manage individual development accounts and reserve accounts;

5 D. "director" means the director of the division;

6 E. "division" means the local government division  
7 of the department of finance and administration;

8 F. "earned income" means wages from employment,  
9 payment in lieu of wages, disability payments, tribal  
10 distributions or earnings from self-employment or acquired from  
11 the provision of services, goods or property, production of  
12 goods, management of property or supervision of services;

13 G. "eligible individual" means a person who meets  
14 the criteria for opening an individual development account;

15 H. "financial institution" means a bank, bank and  
16 trust, savings bank, savings association or credit union  
17 authorized to be a trustee of individual retirement accounts as  
18 defined by federal law, the deposits of which are insured by  
19 the federal deposit insurance corporation or the national  
20 credit union administration;

21 I. "individual development account" means an  
22 account established and maintained in an authorized financial  
23 institution by an eligible individual participating in an  
24 individual development account program pursuant to the  
25 provisions of the Individual Development Account Act;

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1           J. "individual development account program" means a  
2 program approved by the division to establish and administer  
3 individual development accounts and reserve accounts for  
4 eligible individuals and to provide financial training required  
5 by the division for account owners;

6           K. "matching funds" means money deposited in a  
7 reserve account to match the withdrawals for allowable uses  
8 from an individual development account according to a  
9 proportionate formula that complies with rules adopted by the  
10 director;

11           L. "nonprofit organization" means an  
12 instrumentality of the state or an organization described in  
13 Section 501(c)(3) of the Internal Revenue Code of 1986 and  
14 exempt from taxation pursuant to Section 501(a) of that code;

15           M. "program administrator" means a nonprofit  
16 organization or tribe that is determined by the director to be  
17 eligible to offer an individual development account program;

18           N. "reserve account" means an account established  
19 pursuant to the Individual Development Account Act in an  
20 authorized financial institution in which matching funds are  
21 maintained and available for payment for a predetermined  
22 allowable use following completion of all program requirements  
23 by the account owner; and

24           O. "tribe" means an Indian nation, tribe or pueblo  
25 located in whole or in part within New Mexico.

1           Section 3.   [NEW MATERIAL] INDIVIDUAL DEVELOPMENT

2   ACCOUNTS. -- An individual development account may be established  
3   for an eligible individual as part of an individual development  
4   account program if the written instrument creating the account  
5   sets forth the following:

6           A.   the account owner is an eligible individual  
7   according to program requirements at the time the account is  
8   established;

9           B.   the individual development account is  
10  established and maintained in an authorized financial  
11  institution;

12          C.   deposits to an individual development account  
13  shall be made in accordance with the rules adopted pursuant to  
14  the Individual Development Account Act;

15          D.   withdrawals from an individual development  
16  account may be only for allowable uses, unless approved by the  
17  program administrator as set forth in the rules adopted  
18  pursuant to the Individual Development Account Act; and

19          E.   the financial institution in which an individual  
20  development account is held shall not be liable for withdrawals  
21  made for uses other than allowable uses.

22           Section 4.   [NEW MATERIAL] ELIGIBLE INDIVIDUALS. --

23           A.   Except as set forth in Subsection B of this  
24  section, an eligible individual shall have earned income and  
25  shall be:

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- 1 (1) eighteen years of age or older;
- 2 (2) a citizen or legal resident of the United
- 3 States;
- 4 (3) a resident of New Mexico; and
- 5 (4) a member of a household with earned income
- 6 that is no more than two hundred percent of the federal poverty
- 7 guidelines for the size of the household.

8 B. A child in foster care is an eligible individual  
9 if he:

- 10 (1) is sixteen years of age or older;
- 11 (2) has earned income that is no more than two
- 12 hundred percent of the federal poverty guidelines for a family
- 13 of one, when the child's income is evaluated separately from
- 14 the income of his foster household;
- 15 (3) is a citizen or legal resident of the
- 16 United States; and
- 17 (4) is a resident of New Mexico.

18 Section 5. [NEW MATERIAL] RESPONSIBILITIES OF THE  
19 DIVISION. --

20 A. By December 31 following the effective date of  
21 the Individual Development Account Act, the director shall  
22 adopt rules implementing the provisions of that act.

23 B. The director shall make an annual report each  
24 November to the governor and to an appropriate interim  
25 committee of the legislature.

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1 C. The division shall use no more than five percent  
2 of the money appropriated to fund the Individual Development  
3 Account Act to administer that act.

4 Section 6. [NEW MATERIAL] ADVISORY COMMITTEE. --

5 A. An advisory committee shall be created to  
6 provide oversight of the administration of individual  
7 development account programs and to suggest possible changes  
8 that benefit account owners or improve the effectiveness of the  
9 individual development account programs throughout the state.

10 B. The advisory committee shall meet at least two  
11 times in a calendar year to review the implementation of the  
12 Individual Development Account Act.

13 C. The advisory committee shall consist of the  
14 lieutenant governor and eight members appointed by the governor  
15 to represent the state geographically. The director or his  
16 designee shall serve as an ex-officio member of the advisory  
17 committee.

18 D. Members of the advisory committee who are  
19 account owners shall receive per diem and mileage pursuant to  
20 the Per Diem and Mileage Act and shall receive no other  
21 compensation, perquisite or allowance for their participation  
22 on the advisory committee.

23 E. The division shall provide adequate staff  
24 support and administrative services for the advisory committee.

25 Section 7. [NEW MATERIAL] ADMINISTRATION OF INDIVIDUAL

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1 DEVELOPMENT ACCOUNT PROGRAMS. --

2 A. An individual development account may be  
3 established for an eligible individual, provided the money  
4 deposited in the account is expended for allowable uses for the  
5 account owner or the account owner's spouse or dependents,  
6 unless otherwise approved by the program administrator.

7 B. An individual development account program shall  
8 be approved and monitored by the director for compliance with  
9 applicable law, the Individual Development Account Act and  
10 rules adopted pursuant to that act.

11 C. An individual development account program shall  
12 establish a reserve account sufficient to meet the matching  
13 fund commitments made to all account owners participating in  
14 the individual development account program and shall report at  
15 least quarterly to each account owner the amount of money  
16 available in the reserve account for use by the account owner  
17 to match withdrawals for allowable uses.

18 D. An individual development account program shall  
19 provide financial education and other necessary training  
20 pertinent to allowable uses by account owners, develop  
21 partnerships with financial institutions, develop matching  
22 funds and manage the operations of an individual development  
23 account that is established within the program.

24 E. The division shall adopt rules necessary to  
25 implement the Individual Development Account Act.

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1 F. An eligible individual may open an individual  
2 development account upon verification by the program  
3 administrator that the individual maintains no other individual  
4 development account.

5 G. More than one eligible individual per household  
6 may hold an individual development account.

7 H. An account owner shall complete a financial  
8 education program prior to the withdrawal of money from his  
9 individual development account.

10 Section 8. [NEW MATERIAL] ALLOWABLE USES-- WITHDRAWALS  
11 FROM INDIVIDUAL DEVELOPMENT ACCOUNTS-- FORFEITURE OF MATCHING  
12 FUNDS FROM RESERVE ACCOUNT-- LOSS OF ELIGIBLE INDIVIDUAL  
13 STATUS. --

14 A. Allowable uses of the money withdrawn from an  
15 individual development account are limited to the following:

16 (1) expenses to attend an approved post-  
17 secondary or vocational educational institution, including  
18 payment for tuition, books, supplies and equipment required for  
19 courses;

20 (2) costs to acquire or construct a principal  
21 residence as defined in rules adopted pursuant to the  
22 Individual Development Account Act that is the first principal  
23 residence acquired or constructed by the account owner;

24 (3) costs of major home improvements or  
25 repairs on the home of the account owner;

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1 (4) capitalization or costs to start or expand  
2 a business, including capital, plant, equipment, operational  
3 and inventory expenses, attorney and accountant fees and other  
4 costs normally associated with starting or expanding a  
5 business;

6 (5) acquisition of a vehicle necessary to  
7 obtain or maintain employment by an account owner or the spouse  
8 of an account owner; and

9 (6) in the case of a deceased account owner,  
10 amounts deposited by the account owner and held in an  
11 individual development account shall be distributed directly to  
12 the account owner's spouse, or if the spouse is deceased or  
13 there is no spouse, to a dependent or other named beneficiary  
14 of the deceased or if the recipient is eligible to maintain the  
15 account, the account and matching funds designated for that  
16 account from a reserve fund may be transferred and maintained  
17 in the name of the surviving spouse, dependent or beneficiary.

18 B. If an account owner withdraws money from his  
19 individual development account for a use other than an  
20 allowable use, he forfeits a proportionate amount of matching  
21 funds from the reserve account, as set forth in the agreement  
22 between the program administrator and the account owner, unless  
23 an amount equal to the withdrawn money is redeposited to his  
24 individual development account within the twelve months  
25 following the withdrawal.

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1 C. The program administrator may approve a  
2 withdrawal by an account owner from his individual development  
3 account to be used for a purpose other than an allowable use  
4 only for serious emergencies as specified in the rules adopted  
5 by the director.

6 D. At the request of the account owner and with the  
7 written approval of the program administrator, amounts may be  
8 withdrawn from the account owner's individual development  
9 account and deposited in another individual development account  
10 established for an eligible individual who is the account  
11 owner's spouse or dependent.

12 Section 9. [NEW MATERIAL] APPROVAL OF INDIVIDUAL  
13 DEVELOPMENT ACCOUNT PROGRAMS. --

14 A. Annually the division shall solicit a request  
15 for proposals from nonprofit organizations or tribes  
16 interested in establishing an individual development account  
17 program.

18 B. The director shall determine if an interested  
19 nonprofit organization or tribe is eligible to be a program  
20 administrator.

21 C. Eligible program administrators shall develop  
22 individual development account programs that are subject to  
23 review and approval by the director.

24 D. The director shall approve an individual  
25 development account program submitted by a program

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1 administrator before the program establishes individual  
2 development accounts or reserve accounts or provides services  
3 required by the Individual Development Account Act to eligible  
4 individuals.

5 E. An individual development account and a reserve  
6 account may be established only in an authorized financial  
7 institution.

8 F. The director shall monitor all individual  
9 development account programs to ensure that individual  
10 development accounts and reserve accounts are being operated  
11 according to federal law, the provisions of the Individual  
12 Development Account Act and rules adopted pursuant to that act.

13 Section 10. [NEW MATERIAL] TERMINATION OF INDIVIDUAL  
14 DEVELOPMENT ACCOUNT PROGRAMS. --

15 A. An individual development account program shall  
16 be terminated if the:

17 (1) division determines that the program is  
18 not being operated pursuant to the provisions of the Individual  
19 Development Account Act or rules adopted pursuant to that act;

20 (2) provider of the program no longer retains  
21 its status as a program administrator; or

22 (3) program administrator chooses to cease  
23 providing an individual development account program.

24 B. If the director is unable to identify and  
25 certify a program administrator to assume the authority to

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1 continue to operate a terminated individual development account  
2 program, money in a reserve account shall be deposited into the  
3 individual development accounts of the account owners for whom  
4 the proportionate share of the reserve account was established  
5 as of the first day of termination of the program

6 Section 11. [NEW MATERIAL] REPORTING. -- A program  
7 administrator operating an individual development account  
8 program pursuant to the Individual Development Account Act  
9 shall report at least annually to the director, as set forth in  
10 the rules of the division. Individual account owners shall not  
11 be identified in the report. The report shall include:

12 A. the number of eligible individuals making  
13 contributions to individual development accounts;

14 B. the total money contributed to each individual  
15 development account and deposited into each reserve account;

16 C. the total money in the aggregate deposited in  
17 individual development accounts and reserve accounts  
18 administered by the individual development account program;

19 D. the amounts withdrawn from individual  
20 development accounts for either allowable uses or for uses  
21 other than allowable uses and the amounts withdrawn from  
22 reserve accounts;

23 E. the balances remaining in individual development  
24 accounts and reserve accounts; and

25 F. other information requested by the director to

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1 monitor the costs and outcomes of the individual development  
2 account program.

3 Section 12. [NEW MATERIAL] ACCOUNT FUNDS DISREGARDED FOR  
4 PURPOSES OF CERTAIN MEANS-TESTED PROGRAMS. --

5 A. Money deposited into an individual development  
6 account, interest earned on that account and interest and  
7 matching funds deposited in a reserve account for the benefit  
8 of the account owners shall be disregarded for the purposes of  
9 determining eligibility for benefits and for determining  
10 benefit amounts pursuant to the New Mexico Works Act.

11 B. When determining eligibility for benefits and  
12 determining benefit amounts due under the food stamp program  
13 and medicaid, the human services department shall, pursuant to  
14 the authority granted by 7 USCA 2014 (d) and (g), disregard  
15 money deposited into an individual development account,  
16 interest earned on that account and interest and matching funds  
17 deposited in a reserve account for the benefit of the account  
18 owners.

19 C. Money withdrawn from an individual development  
20 account for a purpose other than an allowable use shall be  
21 counted as a resource for purposes of the New Mexico Works Act,  
22 medicaid and the food stamp program unless replaced within the  
23 twelve-month allowable time period.

24 Section 13. Section 27-2B-7 NMSA 1978 (being Laws 1998,  
25 Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as  
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1 amended by Laws 2001, Chapter 295, Section 4 and by Laws 2001,  
2 Chapter 326, Section 4) is amended to read:

3 "27-2B-7. FINANCIAL STANDARD OF NEED. --

4 A. The secretary shall adopt a financial standard  
5 of need based upon the availability of federal and state funds  
6 and based upon appropriations by the legislature of the  
7 available federal temporary assistance for needy families grant  
8 made pursuant to the federal act in the following categories:

- 9 (1) cash assistance;
- 10 (2) child care services;
- 11 (3) other services; and
- 12 (4) administrative costs.

13 The legislature shall determine the actual percentage of each  
14 category to be used annually of the federal temporary  
15 assistance for needy families grant made pursuant to the  
16 federal act.

17 B. The following income sources are exempt from the  
18 gross income test, the net income test and the cash payment  
19 calculation:

- 20 (1) medicaid;
- 21 (2) food stamps;
- 22 (3) government-subsidized foster care payments  
23 if the child for whom the payment is received is also excluded  
24 from the benefit group;
- 25 (4) supplemental security income;

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1 (5) government-subsidized housing or housing  
2 payments;

3 (6) federally excluded income;

4 (7) educational payments made directly to an  
5 educational institution;

6 (8) government-subsidized child care;

7 (9) earned income that belongs to a person  
8 seventeen years of age or younger who is not the head of  
9 household;

10 (10) fifty dollars (\$50.00) of collected child  
11 support passed through to the participant by the department's  
12 child support enforcement program; ~~and~~

13 (11) earned income deposited in an individual  
14 development account by a member of the benefit group or money  
15 received as matching funds for allowable uses by the owner of  
16 the individual development account pursuant to the Individual  
17 Development Account Act; and

18 [~~(11)~~] (12) other income sources as determined  
19 by the department.

20 C. The total countable gross earned and  
21 unearned income of the benefit group cannot exceed eighty-five  
22 percent of the federal poverty guidelines for the size of the  
23 benefit group.

24 D. For a benefit group to be eligible to  
25 participate:

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1 (1) gross countable income that belongs to the  
2 benefit group must not exceed eighty-five percent of the  
3 federal poverty guidelines for the size of the benefit group;  
4 and

5 (2) net countable income that belongs to the  
6 benefit group must not equal or exceed the financial standard  
7 of need after applying the disregards set out in Paragraphs (1)  
8 through (4) of Subsection E of this section.

9 E. Subject to the availability of state and federal  
10 funds, the department shall determine the cash payment of the  
11 benefit group by applying the following disregards to the  
12 benefit group's earned gross income and then subtracting that  
13 amount from the benefit group's financial standard of need:

14 (1) for the first two years of receiving cash  
15 assistance or services, if a participant works over the work  
16 requirement rate set by the department pursuant to the New  
17 Mexico Works Act, one hundred percent of the income earned by  
18 the participant beyond that rate;

19 (2) for the first two years of receiving cash  
20 assistance or services, for a two-parent benefit group in which  
21 one parent works over thirty-five hours per week and the other  
22 works over twenty-four hours per week, one hundred percent of  
23 income earned by each participant beyond the work requirement  
24 rate set by the department;

25 (3) one hundred twenty-five dollars (\$125) of

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1 monthly earned income and one half of the remainder, or for a  
2 two-parent family, two hundred twenty-five dollars (\$225) of  
3 monthly earned income and one half of the remainder for each  
4 parent;

5 (4) monthly payments made for child care at a  
6 maximum of two hundred dollars (\$200) for a child under two  
7 years of age and at a maximum of one hundred seventy-five  
8 dollars (\$175) for a child two years of age or older;

9 (5) costs of self-employment income; and

10 (6) business expenses.

11 F. The department may recover overpayments of cash  
12 assistance on a monthly basis not to exceed fifteen percent of  
13 the financial standard of need applicable to the benefit  
14 group. "

15 Section 14. Section 27-2B-10 NMSA 1978 (being Laws 1998,  
16 Chapter 8, Section 10 and Laws 1998, Chapter 9, Section 10) is  
17 amended to read:

18 "27-2B-10. INDIVIDUAL DEVELOPMENT ACCOUNTS. -- [A.] A  
19 participant may establish an individual development account  
20 pursuant to the Individual Development Account Act.

21 ~~[B. A participant or a person on the participant's~~  
22 ~~behalf may contribute to an individual development account;~~  
23 ~~provided the participant first establishes a savings account~~  
24 ~~not to exceed one thousand five hundred dollars (\$1,500).~~

25 C. ~~An individual development account shall be~~

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1 ~~organized as a trust. The department shall by rule establish~~  
2 ~~the form, substance and procedure by which the trust shall be~~  
3 ~~established.~~

4 ~~D. Individual development accounts shall be used~~  
5 ~~only for:~~

6 ~~(1) post-secondary education for dependents;~~

7 ~~(2) purchase of a principal residence for a~~  
8 ~~first-time homebuyer; or~~

9 ~~(3) business capitalization.~~

10 ~~E. Upon establishing an individual development~~  
11 ~~account, the participant shall declare the purposes for the~~  
12 ~~account.~~

13 ~~F. If the declared purpose of an individual~~  
14 ~~development account is for the purchase of a principal~~  
15 ~~residence for a first-time homebuyer, the amount used for that~~  
16 ~~purpose shall be limited to one thousand five hundred dollars~~  
17 ~~(\$1,500).~~

18 ~~G. Money in an individual development account shall~~  
19 ~~only be disbursed to an educational institution, to a person~~  
20 ~~due money for a principal residence or to a business~~  
21 ~~capitalization account.~~

22 ~~H. A participant shall contribute only earned~~  
23 ~~income to an individual development account.]"~~

24 Section 15. APPROPRIATION. --Two hundred fifty thousand  
25 dollars (\$250,000) is appropriated from the general fund to the

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1 local government division of the department of finance and  
2 administration for expenditure in fiscal year 2004 to  
3 administer and implement the Individual Development Account  
4 Act. The local government division shall use no more than five  
5 percent of this appropriation to administer the Individual  
6 Development Account Act. Any unexpended or unencumbered  
7 balance remaining at the end of fiscal year 2004 shall revert  
8 to the general fund.

9 Section 16. EFFECTIVE DATE. --The effective date of the  
10 provisions of this act is July 1, 2003.